



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/705,273

11/10/2003

Brian J. Brown

S63.2N-6769-US03

4909

490 7590 05/30/2008  
VIDAS, ARRETT & STEINKRAUS, P.A.  
SUITE 400, 6640 SHADY OAK ROAD  
EDEN PRAIRIE, MN 55344

EXAMINER

BUI, VY Q

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

05/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/705,273	<b>Applicant(s)</b> BROWN ET AL.	
	<b>Examiner</b> Vy Q. Bui	<b>Art Unit</b> 3773	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38-56 is/are pending in the application.
- 4a) Of the above claim(s) 40,41,44 and 47-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-39, 42-43, 45-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

Claims 40-41, 44 and 47-56 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 8/10/2007 and now is made final.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 38, 42-43 and 45 are rejected under 35 U.S.C. 102(e) as being anticipated by Fischell et al-6,190,403.

As to claims 38, 42-43 and 45, Fischell-'403 discloses a stent made of a stainless steel and Fischell-'403's Fig. 9 (please see previous Office Action, paper 12/27/2007) discloses substantially the claimed invention as indicated in the previous Office Action (paper 12/27/2007).

Fischell's Fig. 9 is not shown in this "Office Action" because the hand written notes/labels can not be electronically transmitted.

2. Claims 38 and 39 are rejected under 35 U.S.C. 102(e) as being anticipated by Kanesaka et al-5,810,872.

As to claims 38 and 39, Kanesaka -'872 discloses a stent shown in Fig. 1 presented in the previous Office Action (please see previous Office Action paper 12/27/2007).

Kanesaka's Fig. 1 is not shown in this "Office Action" because the hand written notes/labels can not be electronically transmitted.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al-6,190,403 in view of Anderson et al.-5,800,526.

As to claim 39, Fischell-'403 discloses every limitation of the claimed invention, except for a straight link. However, Anderson-'526 (col. 4, lines 37-40; col. 9, lines 52-61) discloses a stent of tantalum for easy detection under a fluoroscopy process. It would be obvious to one of ordinary skill in the art to make Fischell-'403 from a tantalum material for easy detection under a fluoroscopy process.

### ***Response to Arguments***

Applicant's arguments filed 2/19/2008 have been fully considered but they are not persuasive for the below reasons.

1. The claims presented in this present application are not word by word copied claims of U.S. Patent No. 6,540,775. Therefore, the scope(s) of the claims of the present application and U.S. Patent No. 6,540,775 can not be the same.

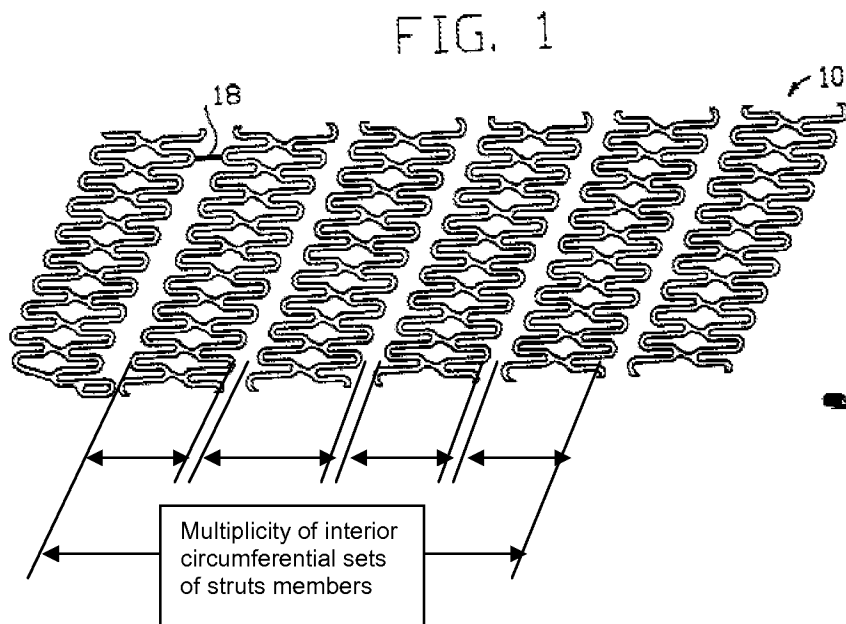
2. In re Spina, 24 USPQ2d at 1145 is applicable for cases with ambiguous claim language and is not applicable to the present application because there is no ambiguity in the claims of the present invention. The interpretation of the claims of the present application follows guidance from MPEP 2301.03, which states that:

Identical language in claims does not guarantee that they are drawn to the same invention. Every claim must be construed in light of the application in which it appears. 37 CFR 41.200(b). Claims reciting means-plus-function limitations, in particular, might have different scopes depending on the corresponding structure described in the written description.

3. For reason in above item 2, it is reasonable to reject the claims of the present invention as indicated in the previous "Office Action" (paper 12/27/2007) based on US Pat.

6,190,403 and repeat the same rejection of the previous "Office Action" in this present "Final Office Action".

4. As to 102(e) rejection based on Kanesaka-5,810,872, it is understood that stent 10 shown in Fig. 1 of Kanesaka-'872, for example, is formed by raw material shaped as strip 11 shown in Fig. 2. However, it is also clearly shown that as a final product, each stent 10 as shown in Fig. 1 and Fig. 8, for example, includes a multiplicity of interior circumferential sets of strut members as shown below:



### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/  
Primary Examiner, Art Unit 3773